



Local Agency Formation Commission of Napa County
Subdivision of the State of California

1030 Seminary Street, Suite B
Napa, California 94559
Phone: (707) 259-8645
Fax: (707) 251-1053
www.napa.lafco.ca.gov

We Manage Local Government Boundaries, Evaluate Municipal Services, and Protect Agriculture

Agenda Item 7f

TO: Local Agency Formation Commission

PREPARED BY: Laura Snideman, Executive Officer

MEETING DATE: December 1, 2014

SUBJECT: Request for Proposals for Legal Services

RECOMMENDATION

By motion, authorize the Interim Executive Officer to circulate a Request for Proposals (RFP) for legal services and return to the Commission with a recommended firm and contract.

ANALYSIS

Background

One of the Commission's responsibilities is to appoint legal counsel. The Commission currently utilizes the services of County Counsel. In striving for increased independence from operational models prior to 2000 when most LAFCOs were operated as divisions of county government, many LAFCOs have chosen private-sector firms for legal counsel instead of continuing to rely on County Counsel. In recent years there have been increasing local concerns about a potential conflict of interest when an application comes to LAFCO in which the County of Napa has either permit authority and/or a specific economic interest. The avoidance of a conflict of interest, or an appearance of a conflict of interest, is important to maintaining confidence in the Commission's process and decisions by the public and all local public agencies. Selecting a private-sector firm provides access to LAFCO-specific expertise, eliminates any perception of a conflict of interest, and avoids the hassle and sometimes political contentiousness of selecting alternative counsel for any specific application which may have an actual conflict of interest with the County Counsel's office.

Fiscal Analysis

There will be a cost increase. Until an RFP is conducted, the exact amount is unknown.

To help understand the potential scale and possible range of the increase, an informal survey of hourly rates of private sector attorneys and firms was conducted. LAFCO currently pay \$159/hour for County Counsel services. Hourly rates from the informal survey ranged from 16-100% higher. For the purposes of this study the hourly rates of associates, paralegals, support staff and the like were not reviewed as the primary cost driver is the rate of the attorney.

We do not have consistent historical usage of legal services and therefore have a rather wide swing of annual expenditures. In the last three years the total annual legal services expenditures ranged from approximately \$10,000 to \$33,000. The FY 2014-15 budget includes \$32,000 for legal services.

Joan Bennett, Vice Chair
Councilmember, City of American Canyon

Brad Wagenknecht, Commissioner
County of Napa Supervisor, 1st District

Brian J. Kelly, Chair
Representative of the General Public

Greg Pitts, Commissioner
Councilmember, City of St. Helena

Bill Dodd, Commissioner
County of Napa Supervisor, 4th District

Gregory Rodeno, Alternate Commissioner
Representative of the General Public

Juliana Inman, Alternate Commissioner
Councilmember, City of Napa

Mark Luce, Alternate Commissioner
County of Napa Supervisor, 2nd District

Laura Snideman
Executive Officer

For illustrative purposes, a scenario was run assuming a \$25,000 increase in the total annual cost of legal services. This is a 122% increase over the historical 3-year average of actual expenditures. Using the Commission's existing cost-sharing formula, the additional annual fiscal impact of the scenario on each of the agencies would be as follows:

American Canyon	\$ 1,993
Calistoga	747
City of Napa	8,370
County of Napa	12,500
St. Helena	819
Yountville	570

Please know these amounts are for illustrative purposes only and again, cannot be considered a solid representation of the proposals you might receive.

There are a variety of additional factors that may influence the total cost of legal services. Some of these costs can be passed on to applicants under State law and the Commission's policies and the annual fees the Commission adopts. Historically this LAFCO has absorbed legal costs in the general application fee. This could be revisited and each applicant could be charged additionally and specifically for legal fees. That would reduce the impact of an increase. In addition, there may also be a change in the number of hours of service that is used which could increase or decrease the total cost. This is also difficult to predict. A variety of factors affecting usage, and therefore the total cost, come to mind. One is that there initially may be an increase in the amount of time a new attorney would need to spend to become familiar specifically with LAFCO of Napa County. However, there may also be a corresponding decrease in the amount of time a more specialized attorney may need to spend answering questions on specific projects or applications. An additional consideration is that switching to utilizing consulting services for CEQA questions may result in fewer hours from an attorney as County Counsel has been addressing CEQA questions until now. I additionally recommend that the Executive Officer request legal counsel attend only certain Commission meetings as necessary, not every one. Most LAFCO meetings do not necessitate the presence of an attorney and many commissions allow the Executive Officer the discretion to best determine when an attorney may be necessary. This is a common practice in many LAFCOs. Lastly, it is most likely a contract with a monthly retainer for General Counsel services will be recommended which generally reduces hourly rates and creates a predictable annual cost absent any significant outliers such as a lawsuit.

In summary, there will be a cost increase, the amount of which is difficult to determine but there are ways to mitigate the cost increase and the benefits of having private-sector legal counsel are expected to outweigh the cost differential.

Process

As described in the recommendation, the Interim Executive Officer would return to the Commission, likely at the regular February meeting or a special meeting in March, with a recommended attorney or firm and draft contract for the Commission's consideration. More specifically, the Interim Executive Officer would oversee development of an RFP, conduct a selection process, and negotiate and draft a contract. The Interim Executive Officer has personal familiarity with a number of different attorneys and firms providing independent service to other LAFCOs and direct experience in conducting this process for his past employer.